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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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12 TOM AZZARELLO,

13 Plaintiff,

14 v.

15 NAVAGILITY LLC, a limited liability
corporation; ANTHONY M. DI MARCO, an
16 individual and DOES 1 - 10, inclusive,

17 Defendant.
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) **CASE NO. 3:08-cv-2371-MMC**

) **Hon. Maxine M. Chesney**

) **DECLARATION OF JOAN E. PRESKY**
) **IN SUPPORT OF REQUEST FOR**
) **SETTING OF HEARING ON MOTION**
) **TO DISMISS**

) **Action Filed: May 8, 2008**

19 I, JOAN E. PRESKY, declare:

20 1. I am an attorney with the Huddleston Law Group, counsel for plaintiff
21 TOM AZZARELLO ("plaintiff"). I am admitted to practice before this Court. I submit this
22 declaration in support of plaintiff's Request for Setting of Hearing on Motion to Dismiss. I have
23 personal knowledge of the matters stated herein and would testify competently to them if called as
24 a witness.

25 2. Plaintiff requests that defendant's pending Motion to Dismiss be decided without a
26 hearing or, alternatively, that it be set for hearing at the earliest possible date, earlier than the current
27 hearing date of September 5, 2008.

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3. The Complaint in this case was filed on May 8, 2008. The defendant filed a Motion to Dismiss on May 30, 2008. That Motion is fully briefed and ready to be decided.

4. As a result of defendant's disinclination to stipulate to a Magistrate, the case was just reassigned to Judge Chesney. This resulted in a July 10 hearing date on the Motion to Dismiss being vacated.

5. Defendant's lawyer, Charles Jung, advised plaintiff's lawyer that he had been told that Judge Chesney could hear the motion with as little as two weeks notice. However, Mr. Jung would not be available until August 29, the day before the Labor Day weekend and a day on which I am scheduled to be out of town.

6. I asked Mr. Jung to set the motion on an earlier date, making clear to Mr. Jung that I was available to have the motion decided on several of the Court's available motion dates.

7. Mr. Jung declined, saying that the first date (other than August 29) on which he was available was September 5, and that he would set the hearing for that date over plaintiff's objection.

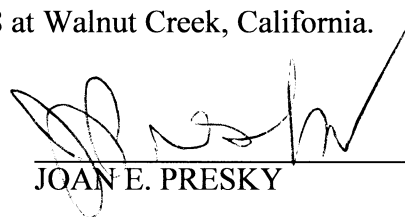
8. The Motion has been fully briefed since June 26, 2008. It could be decided without a hearing.

9. Plaintiff requests that the Court decide the motion without a hearing, or, alternatively, set the motion for hearing in July or August.

10. It is unfair for the plaintiff to have to wait almost four months for it to be determined whether the case will be heard by this Court, and to proceed to case management and discovery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. If called as a witness in this action, I could testify to the truth of the foregoing from my own personal knowledge.

Executed this 11th day of July 2008 at Walnut Creek, California.


JOAN E. PRESKY